IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.749 OF 2005

Surendra Ram Lakhan Chauhan ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mr.Akhilesh Singh for Applicant.

Mr.D.R.More, A.P.P. for Respondent.

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CORAM: A.M.KHANWILKAR, J.

FEBRUARY 14, 2005.

P.C.

1. Heard Counsel for the parties.

2. This matter was filed on 9th February 2005 and got circulated for 10th February 2005. That being the first date of hearing, request of A.P.P. for time to take instructions was acceded to. Accordingly, matter is kept today.

3. In the morning session, due to unavailability of the learned A.P.P. matter was kept back at 2.45 p.m. At 2.45 p.m. when the

matter is called out after the lunch break, learned A.P.P. states that the concerned Investigating Officer has not come, but note has been received through Constable to indicate that trial of the case has already commenced and matter is notified for recording of evidence on 18th February 2005. That by itself, cannot be the ground for rejection of bail application as filed. Indeed, the Applicant is prosecuted for serious offence under Section 302 read with Section 34 of the Indian Penal Code. However, the prosecution is relying on statement of Kishnamurari Rajendra Prasad Mishra who was the eye-witness to the incident of having specifically mentioned the names of all the three accused. The statement of Krishnamurari Rajendra Prasad Mishra which is appended to this Application for bail at Page 15 nowhere makes reference to the name of the Applicant, but description of a person, may be resembling to that of the Applicant, is given. However, there is nothing on record to suggest that identification parade has been held. If it is so, merely because description of the assailant which resembles with the description of the Applicant as given by the eye-witness, cannot be the only material to proceed against the

Applicant. Learned A.P.P. has not brought to my notice any other circumstance.

4. When the order is being dictated, now learned A.P.P. points out that one more circumstance available from the record is that the Applicant was arrested with blood stained clothes on his person. When asked whether any C.A. report has been obtained with regard to the so-called blood stained clothes recovered from the Applicant, learned A.P.P. states that there is nothing on record to suggest that such report has either been received or still awaited. In the circumstances, even this circumstance cannot be of any avail to the prosecution.

5. The lower Court while rejecting the Bail Application has adverted to the fact that the Applicant has given three different addresses on different occasions. The learned A.P.P. is not in a position to state whether the Investigating Officer has taken the trouble of verifying the correctness of the addresses furnished by the Applicant. If that has not been done, merely because the Applicant has furnished three different

addresses, by itself, cannot be the basis to presume that the addresses furnished by him are incorrect. Assuming that the Applicant is permanent resident of Uttar Pradesh, he has furnished his address as residing at Meenakshi Nagar, Kashimira, Taluka and District Thane, correctness of which, cannot be doubted at this stage for want of enquiry made by the Investigating Officer in that behalf.

6. Be that as it may, the Applicant can be put to strict conditions to ensure that he will make himself available for the purpose of trial, if released on bail. The Applicant is directed to be enlarged on bail on the following conditions:

(a) The Applicant is enlarged on bail in connection with C.R.No.I/105/2004 registered with Kashimira Police Station, Thane, on executing personal bond in the sum of Rs.25,000/- (Rupees Twenty-five Thousand) with one or two local sureties in the like amount.

(b) The Applicant shall report to the Investigating Officer, once a fortnight on Saturday

between 10.00 a.m. to 2.00 p.m. and also attend the Trial Court on all dates.

(c) The Applicant shall not influence the prosecution witnesses or tamper with the prosecution evidence in any manner whatsoever.

(d) The Applicant shall extend full co-operation to the Trial Court for early disposal of the trial and if the Trial Court is of the opinion that the Applicant is responsible for the delay of the trial, that fact be recorded in the Roznama, which will be a ground for cancellation of bail.

7. Application disposed of on the above terms.

A.M.KHANWILKAR, J.